IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
Writ Petition No.5582 of 2007
[K.S. Dhurve Vs. Smt. P.N. Bajoriya & ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. R.D. Bhuibhar, Advocate for the petitioner.
Mr. S.S. Sharma, Adv., for Respondent Nos. 1 to 4.

CORAM : A.H. JOSHI, J.

DATE : 12th December,2007.

1. The petitioner is aggrieved by the decree of eviction as confirmed in First Appeal.

2. According to petitioner, though he is a tenant, he was not made a party in original proceedings initiated for permission to terminate tenancy, yet he has been arrayed as a defendant in the suit.

3. Petitioner disputes the landlords' plea that the petitioner herein was barely residing with the tenants and was not a tenant himself.

4. Heard learned Advocate Mr. Bhuibhar for petitioner at length and learned Advocate Mr. S.S. Sharma, who appears for respondent nos. 1 to 4.

5. It is seen from record that foremost

occasion for the petitioner to claim that he was a tenant was when he had an opportunity to file Written Statement, and then if so averred in the Written Statement, to depose in support of the oral evidence.

6. Admittedly, the petitioner herein did not raise this plea. He also stepped in witness box as a Power of Attorney of landlords, and in his oral evidence as well, he has failed to reveal such plea, and depose about his status as a tenant. It is also pertinent to note that original tenants, at no point of time, alleged that present petitioner was a joint tenant with them.

7. Plea of tenancy is, thus, raised by way of afterthought as an effort to defeat the decree that has been passed.

8. The petition, which is based on petitioner's effort of continuing the afterthought story brought by him, does not disclose any error in the judgment.

9. The petitioner is trying to draw attention of this Court to an error recording admission which was not given by him in paragraph 6 to the effect, namely it is admitted that he was residing in the suit house in the capacity of dependent of deceased Sambhashiv . This Court is of the view that this admission cannot be said to have weighed as a solitary basis of judgment and,

therefore, is not of a material consequence. The claim of petitioner to be a tenant is untenable once it is seen, on his own admission, that he failed to set up a plea of tenancy for enabling the landlords to meet it at any stage in the Trial Court.

10. In this situation, the decree as confirmed by the First Appellate Court cannot be faulted with.

11. The suit for eviction of tenants along with the petitioner, who was not a tenant, but was occupying the premises with the tenants, is legal and proper. Had the petitioner to sustain his story of tenancy, he ought to have pleaded and proved it by affording to the landlords an opportunity to defend such plea.

12. In these premises, the Judgment and decree under challenge is legal and proper. It does not call for interference.

13. Petition is, therefore, dismissed.

Judge

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